



8 October 2018

Mr Mark Fitt
Committee Secretary
Senate Economics Legislation Committee
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Parliament House
Canberra ACT 2600
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Uploaded via inquiry webpage

Dear Mr Fitt

Thank you for the opportunity to comment on the design and distribution obligation Bill.

Our submission is confined to a single issue of the proposal to exclude *some* types of default superannuation from the design and distribution obligations but *not all* types. *While* MySuper products have been exempted, it remains unclear why defined benefit (“DB”) schemes have also not been exempted.

A policy that exempts MySuper (“default”) products from the design and distribution obligations but not DB schemes seems to misunderstand the history, structure, design and purpose of DB schemes.

The Super System Review (2009) ultimately concluded that DB schemes should automatically qualify to receive default contributions, with the following three recommendations:

6.13 Defined benefit funds should automatically qualify as ‘default’ funds for SG Act purposes in respect of the defined benefit provided to members so long as the fund meets the requirements of the SG Act to receive contributions.

6.14 If the defined benefit fund is a hybrid fund, then the MySuper criteria must be met for accumulation members in order for the fund to be accepted as a default fund under the SG Act in respect of those members.

6.15 If a member has both defined benefits and accumulation benefits as part of the defined benefit fund’s benefit design, and the accumulation benefit is not necessary to meet the employer’s SG Act obligations, then the MySuper criteria do not have to be met in respect of those members.

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This was clear recognition that DB schemes, although different, need to be treated equivalently to other default superannuation products i.e. MySuper

Rather than thinking of a DB scheme as a promoter marketing a product, it is better thought of a trustee managing the deferred remuneration of members (i.e. an entitlement to receive a benefit based on a formula linked back to past service, benefit salary and other relevant factors).

A DB scheme is, after all, not a product in any conventional sense. In the case of UniSuper's DB scheme, membership is not open to the general public and it is not distributed in the way conventional financial products are i.e. sold through distribution channels. Membership of the DB scheme arises directly as a result being employed in the higher education and research sector. This workplace entitlement, rather than being sold through distribution channels, emanates directly from employment arrangements and the industrial agreements that cover the higher education and research sector.

Further, UniSuper Ltd, the Trustee of UniSuper, has no industrial standing in these agreements and has, consequently, limited power to determine who is covered by these agreements. The main power UniSuper has is to ensure that our benefit design remains suitable for employees in the sector. We submit that this duty is already being met through the exercise of trustee duties under existing governance arrangements applying to the scheme combined with prudential and other regulatory oversight.

Thus, to ensure consistency with existing default superannuation regulation (i.e. MySuper), we submit that DB "products" also need to be exempted from these proposals.

We suggest a change to draft legislation at section 993DB(2), as follows:

993DB (2) This section does not apply to

- (i) A MySuper product; or*
- (ii) A defined benefit product**

While we remain unconvinced that "product" is the right concept to apply to a DB scheme, we believe that the above is a workable definition for DB schemes - restricted in its application to Corporations Law obligations – and could be included¹ as follows (under section 993DA Definitions):

Defined benefit product is a class of beneficial interest in a regulated superannuation fund held by defined benefit members

¹ A definition of defined benefit product that applies more broadly to tax and superannuation law would create inconsistencies in existing law which should be avoided wherever possible.

Thank you for the opportunity to provide comments on the exposure draft.
Should you wish to discuss these comments, in the first instance, please
speak to Benedict Davies, Public Policy Manager on [REDACTED].

Yours faithfully



Kevin O'Sullivan
Chief Executive Officer